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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,864	06/05/2002	Jakob Maier JR.	GKS Case 373	8541

7590 10/03/2002

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EXAMINER

NELSON, JUDITH A

ART UNIT PAPER NUMBER

3644

DATE MAILED: 10/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

SK

**Office Action Summary**

Application No.

10/031,864

Applicant(s)

MAIER, JAKOB

Examiner

Judith A. Nelson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 June 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3 and 7.                      6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

Claim 9 is objected to because of the following informalities: in line 2 of the claim, "the first and second end portion", should recited, --the first and second end portions--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim s 7 and 8 both recite the limitation "the elevations of material". There is insufficient antecedent basis for this limitation in the claim.

It is further unclear as to whether Applicant has intended the claims to introduce elements or are they intended to be further limitations of previously recited structure. Appropriate correction to the claims is required for examination.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 6 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,079,891 (Miller).

Miller discloses a flexible milk hose for connecting a teat cup to a multi-way valve (A) in an automatic milking plant, comprising:

a first end portion (22) for connection to a connecting neck of the teat cup;

a second end portion (24) for connection to a connecting neck of the multi-way valve (A);

a center piece (M), wherein the center piece (M) has a higher flexibility than said first (22) and second (24) end portions, said higher flexibility increasing towards the middle of the center piece (via convolutions 28, located thereon), wherein the center piece (M), further comprises spaced apart reinforcement elements (28) enclosing at least partially the circumference of a certain area of the center piece (M), as best seen in fig. 2; and

reinforcement members (30 and 40), taught by the reference as being formed on first end portion (22) and second end portion (24).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,079,891 (Miller), in view of U.S. Patent 1,301,992 (Anderson).

Concerning claims 3 and 4, while Miller discloses, a rubber/flexible hose (M), having a center piece and the center piece having a higher flexibility (due to its material makeup) versus the metal band and metal ring, 30 and 40, which secure the flexible hose (M) at its end portions onto both the teat cup and the multi-way valve (A); and the flexible tube (M) having reinforcement elements (28); the reference however fails to teach the reinforcement elements comprising a material whose elasticity is lower than that of the material which has been used to produce an area between the spaced apart reinforcement elements; nor does Miller specifically teach the reinforcement elements comprising a metal or a plastic material or other materials whose hardness is greater than that of the milk hose.

Anderson teaches the use of a milking hose apparatus wherein the hose comprises reinforcement elements (in combination structures B and D), which consist of metal springs (D) and rubber tubing (B).

Anderson states in col. 1, lines 76-96, that such a modification to a rubber tubing of a milking apparatus, is essential, "so that when applied to the teats of a cow, a pull on all of the teats will be exerted, but in different directions, and evenly distributed, the direction of the pull on each teat being outward and downward, so that whether the udder may be uneven or lop-sided, or whether one or more teats may be shorter than

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the others the pull will be uniform on all of the teats, both teats and udder may be kept in a healthy condition and the milking operation without discomfort to the cow.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the flexible milking hose of Miller, by incorporating reinforcement elements (28) having a grater hardness than the rubber tube (M), since Anderson teaches that such a design, equip the milking hose with an adaptability to a resistance force of a sort, "so that whether the udder may be uneven or lop-sided, or whether one or more teats may be shorter than the others the pull will be uniform on all of the teats, both teats and udder may be kept in a healthy condition and the milking operation without discomfort to the cow".

Regarding claim 5, Miller, as modified by the teachings of Anderson discloses the claimed invention except for teaching the distance between two respective neighboring reinforcement elements decreasing from the middle of the center piece towards the respective first ad second end portions.

It would have been obvious to a skilled artisan to have, positioned the reinforcement elements in any suitable length from one another depending various factors such as, the amount of resiliency desired or the amount of flexible hose being used, and further since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Claims 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,079,891 (Miller).

Miller discloses the claimed invention except for mentioning the wall thickness of either the reinforcement elements (28) or the wall thickness of the material used for the center piece (M).

It would have been obvious to a skilled artisan in the art, to have modified the wall thickness of either the reinforcement elements or the center piece, by inferably changing the material being used for the aforementioned structures, so as to equip the flexible milk hose with components having a sufficient enough dexterity so as to endure the flow of fluid/milk being received through the device, and further since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USP 416.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 3,726,252.

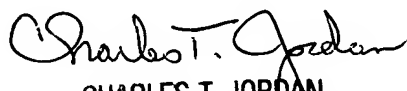
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Judith A. Nelson whose telephone number is (703) 305-0984. The examiner can normally be reached on M-Thur. 9:00 a.m. - 6:30 p.m., alt. Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on 306-4159. The fax phone numbers


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for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 306-4180.

  
CHARLES T. JORDAN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

Judith A. Nelson  
Examiner  
Art Unit 3644

jan   
September 26, 2002